

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on February 5, 1999 at 9:00 A.M., in Room 325 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 328, SB 348, 2/2/1999  
Executive Action: SB 319, SB 237

**HEARING ON SB 348**

**Sponsor:** SEN. SUE BARTLETT, SD 27, Helena and Unionville

**Proponents:** Merv Webb, Columbia Falls City Manager  
David Nielsen, Helena City Attorney  
Alec Hanson, League of Cities and Towns  
Jani McCall, City of Billings

**Opponents:**           None

**Opening Statement by Sponsor:**

**SEN. SUE BARTLETT, SD 27, Helena and Unionville,** introduced Senate Bill 348 which authorizes municipalities to change violations of municipal ordinances from misdemeanor criminal offenses to the civil offense of a municipal infraction. This would include enforcing compliance with parking ordinances, building and zoning ordinances, and ordinances governing nuisances. If state law makes a particular offense a criminal offense, SB 348 specifies that a municipality may not make that offense a municipal infraction.

Section 1 authorizes the municipality to establish civil infractions. Section 2 establishes that a municipal infraction is a civil offense. The penalty may not exceed a \$300 fine for each first offense or a \$500 fine for each repeat offense. A municipal officer, usually a department head for the city or town, may issue citations for municipal infractions. Section 3 sets out the proceedings for trying a municipal infraction. This must be handled like a small claim in city court if the total penalty will be \$3,000 or less. If the penalty is more, the matter must be tried in district court. The city has the burden of proof and must establish its case by clear and convincing evidence. The rights of the defendant are detailed in section 3. All penalties collected are to be handled the same as fines collected in criminal offenses. The city may seek alternative relief in the same action. Section 4 provides procedures for an appeal to the district court.

**Proponents' Testimony:**

**Merv Webb, Columbia Falls City Manager,** remarked that this bill gives municipalities a more streamlined process to deal with the ordinances passed by the city. The ordinances define the quality of life in cities. The full criminal process is not necessary to deal with parking, barking dogs, or sidewalks.

**David Nielsen, Helena City Attorney,** offered technical comments. He suggested that in Section 3(1)(f) the word "offense" be replaced with "infraction". The word "offense" is used in criminal code to describe crimes. The remedies of the City of Helena include taking a violator into district court or using a misdemeanor offense. This legislation would allow tremendous remedies that are both inexpensive and expedient.

**Alec Hanson, League of Cities and Towns,** explained that this legislation was brought at their request. This applies only to

city ordinances and is optional. The real advantage of this legislation is that it will allow city courts, managers and administrators some additional flexibility.

**Jani McCall, City of Billings**, rose in support of SB 348. This will simplify procedures and encourage payment of fines.

*{Tape : 1; Side : A; Approx. Time Counter : 9.16}*

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

**CHAIRMAN GROSFIELD** questioned whether this procedure would be optional on a case-by-case basis or whether it would include all cases. **Mr. Nielsen** responded that a city could decide which ordinances would be misdemeanors and which would fall under this civil remedy. The ordinance would specify how this would be handled.

**Closing by Sponsor:**

**SEN. BARTLETT** remarked that this will eliminate the stigma of having a criminal offense on one's record for something that is not a crime. The ordinance enforcement business is placed in the hands of the administrative departments instead of law enforcement. This is common in other states. She agreed to the change that **Mr. Nielsen** requested.

**HEARING ON SB 328**

**Sponsor:** **SEN. JON ELLINGSON, SD 33, Missoula**

**Proponents:** **Bob Ream, Chairman of the Montana Democratic Party**  
**Christine Kaufmann, Montana Human Rights Network**  
**Kristine Marsh, Director of Services to Children**  
**and Families for the Western Montana Mental**  
**Health Center**  
**Margaret Poore, PRIDE**  
**Joyce Galster, Citizen**  
**Kelly Gibson, PRIDE Board of Director**  
**Colleen Murphy, National Association of Social**  
**Workers**  
**Molly Madden, Helena High School, Youth for Unity,**  
**and The Montana Youth Action Network**  
**Don Judge, AFL-CIO**  
**Rev. David Orendorff, St. Paul's Methodist Church**

**Corlann Bush, Human Resources Affirmative Action  
Director at Montana State University  
Jeff Feathergill, Citizen  
Al Smith, Montana Trial Lawyers Association  
Rebecca Moog, Montana Womens Lobby**

**Scott Crichton, American Civil Liberties Union  
Jani McCall, Citizen  
Andrea Crossguns, Student**

**Opponents: Laurie Koutnik, Christian Coalition of Montana  
Steven White, Citizen  
Arlette Randash, Eagle Forum  
Brian Barrows, Citizen**

**Opening Statement by Sponsor:**

**SEN. JON ELLINGSON, SD 33, Missoula,** introduced SB 328, which addresses the important needs of one group of our citizens. Members of this group are found in all of our religions and political parties. Some are wealthy and some are poor. They are found in every age group. Most are employed, while some are not. They pay taxes. There is no characteristic which distinguishes one member of this group from any other member of our society except one, the tendency to be drawn to seek love and affection from someone of the same sex. Will our state allow this group to be denied the same fundamental civil rights which are enjoyed by the rest of our citizens simply because the person is gay or lesbian?

Today it is probably legal to fire a worker who is doing a good job simply because that person is gay. It is legal to deny public accommodations to a person just because that person is a lesbian. It is also legal to be denied the renewal of a lease of an apartment or house because the individual is gay or lesbian. One can be denied access to credit and educational opportunities because of that person's sexual orientation. Even the state can discriminate and deny services based on sexual orientation.

This bill asks for no special rights. It only asks that the rights and the opportunities which are enjoyed by the rest of our population not be denied because of sexual orientation. Discrimination hurts when one loses a job or another opportunity simply because he or she is gay or lesbian. It also hurts the spirit of all of us when we deny one of our members the fundamental and equal right to pursue his or her dreams of life and happiness simply because of a quality in that person that we do not like.

Taking a firm stand against discrimination does not constitute an endorsement of homosexuality. It is existing law that we do not permit discrimination based on race, creed, religion, color, sex, physical or mental disability, age, or national origin. This bill adds the term "sexual orientation" to the list of prohibited discriminations. This bill will prohibit discrimination in employment, public accommodations, housing, financing and credit transactions, and education.

**{Tape : 1; Side : A; Approx. Time Counter : 9.25}**

**Proponents' Testimony:**

**Bob Ream, Chairman of the Montana Democratic Party**, stated that we all share the faith in the proposition that all men are created equal and have certain inalienable rights. When he was 16 years old he attended a Christian missionary school in Northern India. He subsequently lived in Thailand, the Philippines, and Taiwan. This experience taught him a lot about tolerance for other people. In each of those cultures, a certain percentage of each population was born homosexual. He has carried this bill in the House the last three sessions. The first time he carried the bill, it took some arm twisting for him to do so. After listening to the brave individuals who came forward to testify, he wanted to carry the bill and will be back to testify for this bill every year as long as he is living or until the bill is passed.

A certain percentage of the American Plains Indians were homosexuals. They were brave warriors who rode their horses backwards into battle. They were known as contrary warriors. They were an important part of that population.

Forty years ago, when he lived in Washington, D.C., he remembered the white line in the middle of the bus. Sixty years ago, the holocaust was going on in Europe. He visited the Holocaust Museum in Washington, D.C. A part of this museum is devoted to homosexuals who were murdered by the millions in the gas chambers in Europe. We are fighting the same battle that we were fighting 30 years ago. The opponents to this bill will bring up the same arguments that were brought up 30 years ago during the civil rights debates in this country.

**Christine Kaufmann, Montana Human Rights Network**, presented her written testimony in support of SB 328, **EXHIBIT(jus29a01)**.

**Kristine Marsh, Director of Services to Children and Families for the Western Montana Mental Health Center**, explained that four months ago she left a job that she loved. Her performance was

rated as outstanding by a rigorous evaluation method that included feedback from co-workers, the children and families that she served, community agencies, and local board members. She left the job as the result of toxic discrimination based solely on her sexual orientation. The discrimination was driven by the Executive Director and supported by the members of the Executive Board who stopped seeing her individuality and skills once they discovered that her life partner was a woman. She was accused of having an agenda and wanting to infiltrate the agency.

She often uses the word "ignorance" when talking about the subject of discrimination. This discrimination ignores 10% of the population and human history. In the job she left due to discrimination, she was a member of the administrative team. Her duties included a monthly meeting with other regional managers from around the state. It was a tradition to share information about families. She chose to participate in that tradition.

**Ms. Marsh** introduced her partner, Pam Savage. They own a home, pay their taxes, vote, and contribute to their community. They are both professionals who have dedicated their lives to human services. The job that **Ms. Marsh** left four months ago is the third Montana employer to drive her out of a job in 11 years. Her former employers used Montana law to justify their actions. She is a skilled professional and simply wants the right to do her job. She is a student of life and continues to challenge herself to see things as they really are. Laws are necessary to set standards. Good laws help society to reach for the best in itself. Strong laws help us to rise above ignorance, prejudice, fear and discrimination.

**Margaret Poore, PRIDE**, maintained that in her current position she has a sense of safety, security and freedom that she did not experience when working in the Helena Public Schools. She never talked about her life outside of school when others were discussing their family's joys and losses. Her primary fear was that some parent would find out that she was a lesbian and try to get her fired. There is a myth that gays and lesbians recruit children to become gay. There is another myth that pedophiles are generally gay. Even though these myths have no foundation in fact, she knew that this could be used to fire her. Legally she could be terminated without recourse merely because of her sexual orientation which had no more bearing on the work she was doing with children than the fact that she was a Christian or that sometimes she enjoyed going into a bar and having a beer.

In her current job she has learned a great deal about workplace issues and sexual orientation. Many people have experienced harassment and violence and have been pressured to quit or been fired because of their sexual orientation. In the American

workplace a significant number of employers have begun to realize that allowing discrimination and harassment of sexual minorities is unproductive and bad for business. Most companies that are productive and progressive have policies that protect their workers from discrimination and harassment on the basis of sexual orientation in addition to the other categories which are mandated for protection by federal and state law. From 4% to 10% of any workforce will belong to a sexual minority. From 4% to 10% of consumers belong to a sexual minority.

Many national corporations and government entities provide protection for sexual minorities through their nondiscrimination policies. She provide a handout listing Montana Fair Workplaces, **EXHIBIT (jus29a02)**. All of these employers realize that it makes no more sense to evaluate workers on the basis of their sexual orientation than it does to evaluate them on the basis of their skin color or their religious beliefs. In spite of the number of employers who do not discriminate against sexual minorities, many still do so. This legislation is necessary because this basic human right to work should be guaranteed to all and not depend on the generosity and fair-mindedness of employers.

She recently took a phone call from a man interested in the position of Executive Director of PRIDE. He told her that he was not gay and asked if he needed to be gay to apply for the job. She told him that it had not even occurred to her that a straight person may want to apply for the job. Under current law, PRIDE could chose to discriminate against this person because of his sexual orientation. He could be the best and most qualified person for the job but could be passed over for a less qualified, but gay, person and have no legal recourse.

**{Tape : 1; Side : A; Approx. Time Counter : 9.40}**

**Joyce Galster, Citizen**, presented her written testimony, **EXHIBIT (jus29a03)**.

**Kelly Gibson, PRIDE Board of Director**, remarked that she is currently a department head for Cascade County. Even though she has taken a youth facility that was in distress and has decreased critical incidents, she could still be fired because of her sexual orientation. Even though her employment record is excellent, she could be terminated today.

An employee who left with some hard feelings, contacted her union representative and made claims that **Ms. Gibson** was hiring gay and lesbian people over heterosexual people. She was asked how many on her staff were gay or lesbian. She refused to give that information because she did not know who her gay staff was

anymore than she would know who is Lutheran or who is Catholic. She always takes the needs of the facility first and was dismayed that these allegations were made. This investigation was without merit. There were no laws violated. She could hire all gay staff over heterosexual staff, if she so desired. There is no protection for the heterosexual community as well.

This is an issue of equal rights and discrimination. She firmly believes that Montana Senators would not want to participate in discrimination against any Montana citizen.

**Colleen Murphy, National Association of Social Workers**, presented her written testimony, **EXHIBIT(jus29a04)**.

**Molly Madden, Helena High School, Youth for Unity, and The Montana Youth Action Network**, remarked that her family owns a small business and would never discriminate against an employee based on their sexual orientation. This is a human needs issue. All Montanans need a job and a place to live.

**Don Judge, AFL-CIO**, reported they believe barriers which separate workers on the basis of race, gender, religion, nationality, sexual preference, or physical abilities are barriers that fundamentally weaken our society. He provided written testimony, **EXHIBIT(jus29a05)**.

He read a quote from Pastor Martin Neimolar, who was a victim of the Nazis in Germany. "In Germany, first they came for the communists and I didn't speak up because I wasn't a communist. Then they came for the Jews and I didn't speak up because I wasn't a Jew. Then they came for the trade unionist and I didn't speak up because I wasn't a trade unionist. Then they came for the Catholics and I didn't speak up because I was a Protestant. And then they came for me and by that time there was no one left to speak up."

**Rev. David Orendorff, St. Paul's Methodist Church**, presented his written testimony, **EXHIBIT(jus29a06)**.

**{Tape : 1; Side : B; Approx. Time Counter : 10.04}**

**Corlann Bush, Human Resources Affirmative Action Director at Montana State University**, stated that in the 1997-98 academic year the University considered adding sexual preference to their nondiscrimination policies and procedures. This was discussed on campus, approved by faculty counsel and other governance committees and signed by the president. People have been discriminated against for being celibate, heterosexual, and homosexual. MSU's policy extends protections to everyone by



defining sexual preference/sexual orientation as follows: "Having preference for heterosexuality, homosexuality, or abstinence. Having a history of such a preference or being identified with such a preference." People are discriminated against on the basis of inaccurate perceptions about their sexual orientation. These people deserve protection as well.

The university's first complaint of violation of this policy was from a young Christian woman who was being taunted by acquaintances in her dormitory because she was a virgin and vocally advocated sexual abstinence. They spoke with the offending students, informed them they were violating university policy, and could be subject to campus disciplinary procedures. The harassment stopped. Since then there have been a modest number of complaints brought in response to this aspect of their policy. The primary virtue of the university's policy has been the educational and protective effects of the inclusion of the language itself. People know there is a certain level of civility and tolerance expected of them if they are citizens of the institution. People know they have recourse if they are harmed. Everyone feels a little more safe.

**Jeff Feathergill, Citizen**, commented that only 10 states have laws prohibiting discrimination based on sexual orientation. In Montana, it is legal for any private employer to fire, deny promotion, unfairly compensate, or decline to hire a lesbian or gay person or a perceived lesbian or gay person.

This legislation will attract and retain the best workers. The majority of Montana citizens support fairness and nondiscrimination on the basis of sexual orientation.

Anti-gay groups have stated that gay persons earn a higher income than heterosexuals. There are significant problems with the data they are using. Participants in these studies are not representative of the average gay and lesbian. Gay men earn from 11% to 27% less than the national average. Lesbians earn 5% to 15% less than the national average.

Sexual orientation is not about behavior. It is about who a person is not what he or she does. The perception that a person is a gay or lesbian often results in discrimination.

His employer, St. Peter's Hospital, recently adopted an organizational code of conduct. The second article includes that St. Peter's Hospital will create a workplace that respects the dignity of every person, promotes participation, and ensures safety and well being. They promote a work environment that is free from verbal, physical, and sexual harassment as well as free from favoritism and discrimination including sexual orientation.

He does not speak for the hospital or represent their views. As an employee who happens to be gay, he feels safe, respected and protected from discrimination by their code of conduct.

Will the flag of Montana fly over a state government that protects its citizens from discrimination based on bias, bigotry, and homophobia? Can Montana's lesbian and gay citizens turn to their government to promote fairness so that their livelihood is guaranteed? He urged the passage of this legislation.

**{Tape : 1; Side : A; Approx. Time Counter : 10.13}**

**Al Smith, Montana Trial Lawyers Association**, maintained that discrimination is wrong. The failure to acknowledge the existence of harmful discrimination is acceptance of that discrimination. Tacit approval of discrimination harms the Montanans who are subject to the discrimination as well as all Montanans. We Montanans are better than that. We should not tolerate further discrimination.

**Rebecca Moog, Montana's Women Lobby**, rose in support of SB 328.

**Scott Crichton, American Civil Liberties Union**, acknowledged the courage and clarity expressed by the citizens who traveled distances and bared their private lives to this Committee out of the pain and suffering they have experienced. We are not talking about special rights. We are talking about equal rights for gays and lesbians to be able to find and keep jobs based on their ability and their quality of work. All Montanans should be able to participate in the job market without fear or unfair discrimination.

As in the previous sessions when this bill was introduced, there will be smoke screens raised about sexual orientation meaning that we are here to protect pedophiles. Our Supreme Court has held that consenting adults cannot be discriminated against because of their sexual orientation. He asked the Committee members to reread that case. Job discrimination based on real or perceived sexual orientation is real in Montana. It is pernicious and it is wrong. Written testimony of **Mr. Crichton, EXHIBIT (jus29a07)**.

**Jani McCall, Citizen**, insisted that the discrimination needs to stop. She has had the opportunity to work with many different people. This is about human rights, dignity, respect and caring. As an administrator, she looks for truth, honesty, trust, intelligence, ability to learn, and commitment. She does not look at sexual preference. This is very important legislation for the people of Montana.

**Andrea Crossguns, Student**, stated that as a youth she has not experienced discrimination because she has not held a job or owned a house. She wants to be assured that she will not have to face this discrimination.

**{Tape : 1; Side : B; Approx. Time Counter : 10.18}**

**Opponents' Testimony:**

**Laurie Koutnik, Christian Coalition of Montana**, remarked that there is no legal or Constitutional authority allowing that sexual orientation should be a protected class deserving of special civil rights protection. To make it so would be an unjustified exercise of raw legislative power. On a federal level, there have been many attempts to include sexual orientation in the Civil Rights Act of 1964. Classes presently covered by the anti-discrimination statute, with the exception of creed and religion, are those with immutable, inherent, non-behavioral characteristics. These include age, gender, handicap, race or national origin.

Three touchstones have been used in awarding special protective status to disadvantaged classes. Criteria one includes a history of discrimination evidenced by lack of ability to obtain economic mean income, adequate education or cultural opportunity. Homosexuals have an average income well above the disadvantaged African or Native American households. More than three times as many homosexuals as average Americans are college graduates and hold professional positions. Businesses geared to merchandising and selling to homosexuals have seen a boom in recent years because of the great disposal income in this community. The arts community is filled with individuals who are gay.

Another criteria is that specially protected classes should exhibit obvious, immutable, or distinguishable characteristics like race, color, gender or national origin that defines them as a distinct group. Medical science has failed to discover a way to determine the sexual orientation of an infant at birth. Studies by gays regarding sexual orientation have been considered to be manipulative in their findings. A study of identical twins was also questioned as to how participants were selected for the research. The attempts were not conclusive. Identical twins are proven to be genetically 97% the same. One study showed 50% while another study showed 65%. Masters and Johnson, renowned sexologists, reported a 79.1% success rate for their clients who attempt to discontinue their homosexual practices.

In 1997, two former lesbians from Billings shared with this Committee that they believed the notion of being born as

lesbians. Today they have left the lifestyle and minister to other individuals who are choosing to walk away from the destructiveness of homosexuality. No one can change an immutable characteristic. The fact that thousands of former homosexuals choose to leave this lifestyle on a yearly basis is conclusive.

Another criteria is that protective classes should clearly demonstrate political powerlessness. The gay and lesbian lobby are some of the most powerful lobby groups in the nation. They have given millions of dollars to elect our current president. They have worked hard to get their people elected to introduce legislation to advance a very broad agenda.

The don't ask, don't tell policy used by the gays in the military to get out the service, will now be turned into a policy to secure jobs, any living situation, or educational opportunity.

Under this law of granting minority rights to homosexuals we can expect a deluge of nuisance suits and test cases to not only clog our courts but to bleed the taxpayers and defendants financially dry.

**Steven White, Citizen**, stated that in order for there to be equal protection there must be first an identifiable suspect class and the suspect class must be treated dissimilarly in question. A suspect class is a group of people who share a common, recognizable, immutable characteristic. Neither homosexuality nor sexual preference is considered a suspect class by the U.S. or Montana Supreme Court decision. Homosexuals do not constitute a Constitutionally recognizable class as required by law because they are not distinguishable from the rest of the society by certain objective immutable characteristics. Shared attitudes of preference of any kind does not establish a recognizable class. That was established by Buchanan v. Kentucky in 1987.

Homosexuals have the same legal rights as any individuals currently have which include the right to vote, freedom of press, freedom from unlawful arrest, they can make contracts, etc.

He was told that there was no homosexual agenda. However, in 1991, **REP. VIVIAN BROOKE** introduced a date rape bill. As a housekeeping measure, she eliminated the Sodomy statute. It passed the House but not the Senate. In 1993, HB 215 repealed the Sodomy statute and SB 236 was the sexual harassment bill pertaining to homosexuality. The hate crimes bill was HB 416.

This legislation creates special civil rights and causes us to examine the behavior of someone in hiring. He asked that SB 328 be rejected in its entirety.

**{Tape : 2; Side : A; Approx. Time Counter : 10.40}**

**Arlette Randash, Eagle Forum**, rose in opposition to SB 328.

**Brian Barrows, Citizen**, remarked that he has a friend who was not even considering the lesbian lifestyle until she was recruited to enter the lesbian lifestyle as a young high school student by a teacher and coach. She continues today to struggle with her identity.

**{Tape : 2; Side : A; Approx. Time Counter : 10.42}**

**Questions from Committee Members and Responses:**

**SEN. GRIMES** remarked that the term "sexual orientation" was unduly broad. **SEN. ELLINGSON** responded that "sexual orientation" has come to be understood to mean heterosexuality or homosexuality between two consenting adults. This does not include any heterosexual or homosexual criminal behavior.

**SEN. HALLIGAN** asked whether someone should be able to be fired, not hired, or not promoted because they are gay. **Ms. Koutnik** explained that she is not purporting that employers would be discriminating in either hiring or firing. She is purporting that there will be those individuals by the very virtue of their sexual orientation who will demand employment simply because of who they are.

**SEN. Halligan** contended that the bill does not include an entitlement. The legislation is opposed to discrimination. **Ms. Koutnik** responded that when the military lifted its ban on gays in the military, it was turned around and used against the military. We are seeing mass numbers of recruits who exit the military after one year by simply saying that they are gay and want out. She believed that if this legislation becomes law, it will allow those who have other intentions to demand jobs, educational opportunities, financial assistance, and housing merely on their word that they are of this lifestyle.

**SEN. DOHERTY** remarked that **Ms. Koutnik's** testimony talked about political powerlessness. He added that he has been a legislator since 1991 and this bill has never passed. Does that indicate political powerlessness or political strength. **Ms. Koutnik** responded that it indicates what has been represented by a Lee Newspaper poll conducted in 1996. Fifty-seven percent of the people of this state find deviate sexual conduct offensive and do not believe it should be removed from our statutes.

**SEN. HOLDEN** questioned the position of the Democratic Party regarding this legislation. **Mr. Ream** explained that the Party has a platform position in support of sexual orientation being included in the human rights portion of the statutes, **EXHIBIT(jus29a08)**.

**SEN. HOLDEN** asked how a person could know that a person is a lesbian and that person is being discriminated against. **SEN. ELLINGSON** responded that it was not to be used as a part of the consideration. No one should have to ask whether someone is a lesbian or a heterosexual. He added that in the instance of a lawsuit, there would be a complete defense if the actions were taken on some other basis other than someone's sexual orientation.

**SEN. HOLDEN** remarked that there has been a lot of debate regarding sexual preference versus sexual orientation. In the past the gay/lesbian community geared their legislation toward sexual preference. In this session, their political agenda is focused around the fact that they were born as a gay or lesbian and that this is a sexual orientation. He added that the handout provided by the AFL-CIO, Resolution No. 9, speaks to sexual preference. **Mr. Judge** explained that their union uses both terms. The last section of the resolution addresses discrimination based on sexual orientation. The AFL-CIO's policy is to oppose discrimination, based on either preference or orientation.

**SEN. DOHERTY** accounted that there is a fear that unscrupulous people would use this particular legislation to feather their own nests and that of unscrupulous trial lawyers. He added that the current statute would prevent discrimination based on the basis of religion. He questioned whether unscrupulous Irish Catholics have used this legislation in the past to set up potential employers so that they can claim they were fired because of their particular belief. **SEN. ELLINGSON** stated that he is not aware of any such case. This has not been a problem when discrimination has been prohibited based on religion, age, or physical disability.

**SEN. GRIMES** asked if any quantifiable statistics were available on whether inclusion of this language in the law impacted societies where it has been implemented? **Ms. Koutnik** was not aware of any such studies.

**SEN. GRIMES** asked **SEN. ELLINGSON** whether he believed that he had the right to view homosexuality as a preference more than an orientation. **SEN. ELLINGSON** asserted that he was entitled to any

beliefs he had on this issue. A vote for this bill is not endorsing any particular sexual conduct.

**SEN. GRIMES** remarked that it would be very easy to influence young people in a lifestyle that they may not otherwise choose. He saw a problem with inserting a behavior in a list of immutable characteristics or Constitutional protections. **SEN. ELLINGSON** disagreed. A percentage of our population has been homosexual for thousands of years. Acknowledging the fact that a proportion of our population is homosexual, the question is whether the behavior or condition can form the basis for discrimination against that individual. As a society, we need to say that it cannot form the basis for discrimination against that individual.

**SEN. GRIMES** questioned whether this bill would affect in any way what must be taught in our public education system. **SEN. ELLINGSON** did not believe that it did.

**CHAIRMAN GROSFIELD** referred to page 1, line 29, which addressed discrimination against a person in compensation or in a term, condition, or privilege of employment. He believed that this would go to benefits. Some insurance companies offer health insurance that may be viewed as discriminatory. He questioned whether this could end up as an entitlement that is currently not in place. **SEN. ELLINGSON** believed he was referring to employers offering health benefits to families and whether or not those benefits might be available to a same sex partner. If that is determined to be a discrimination, it would be prohibited. The theory would be if a benefit is provided to an employee, having a monetary amount that is not provided to a similarly situated employee, that might be considered to be discriminatory. This could never be justified in terms of a preference or an entitlement. If it were found to be discriminatory, it could only be justified as a prohibited discrimination characterizing it as a benefit which was provided to one individual and was wrongfully denied to another.

**CHAIRMAN GROSFIELD** asked whether under this bill an employer whose health insurance did not provide for coverage in a same sex relationship would be in violation of the statute. **SEN. ELLINGSON** maintained that the bill is silent on that specific point. A court would need to rule on the factual analysis presented.

*{Tape : 2; Side : B; Approx. Time Counter : 11.11}*

**CHAIRMAN GROSFIELD** further remarked that on page 1, lines 16-17 state that an employment agency cannot discriminate for sexual orientation unless based on a bonafide occupational

qualification. He asked for clarification of the language. **SEN. ELLINGSON** responded that the prohibition against discrimination is not absolute. If the reasonable demands of the position require consideration of sexual orientation, it would not involve discrimination.

**CHAIRMAN GROSFIELD** added that on page 7, line 22 spoke to discrimination in financing and credit transactions. This states no discrimination on basis of sexual orientation unless based on reasonable grounds. He asked the specifics of "reasonable grounds". **SEN. ELLINGSON** responded that he could not think of reasonable grounds where a decision would be based on extending credit and that credit could be denied because of sexual orientation.

**Ms. Kaufman** remarked that this is standard language that occurs throughout the act. If you have a girls' school and want to hire a dorm director, you can legally discriminate against men for that position. Would PRIDE, as an organization that works on gay and lesbian issues, be able to discriminate based on sexual orientation because they want a person that is knowledgeable? She guessed that they would not be allowed to but they may be able to make the case.

**SEN. DOHERTY** commented that the state health insurance plan covers married persons. It does not cover people who may be in a long-term committed relationship where the persons are not married. Is this discriminating against those individuals? If it is not discriminatory in a heterosexual committed relationship, would it be discriminatory in a same sex relationship? **SEN. ELLINGSON** stated that it would not.

**SEN. HOLDEN** maintained that there was no registry for gays and lesbians. They were adamantly opposed to any kind of a registry of their sexual orientation or preference. He questioned the documentation that would exit. **SEN. ELLINGSON** responded that documenting who is gay or lesbian in the state is not relevant to adding this as a prohibited discrimination under the Human Rights Act.

**CHAIRMAN GROSFIELD** remarked that most statutes talk about discrimination based on certain items in a list. He believed this was based on actual status as opposed to perceived status. **Ms. Kaufman** explained that in earlier legislation they used the words "actual or perceived" and this tended to confuse people. The Human Rights Bureau stated that in all cases the perception would also be covered under the existing statute. They had a case where someone discriminated against a person they thought the person was black. It turned out that the person was



Filipino. The person that discriminated tried to make the case that this was not discrimination because he thought the person was black and it turned out that he wasn't black. The Human Rights Bureau will rule that the perception that that person is black is also covered under the existing statute.

***{Tape : 2; Side : B; Approx. Time Counter : 11.25}***

**Closing by Sponsor:**

**SEN. ELLINGSON** emphasized that this bill is not about the creation of special rights, special preferences and/or entitlements. It is about equal rights that are enjoyed by other citizens of the State of Montana who are not subjected to the discrimination to which this group is subjected. We can hold whatever views we wish about homosexuality, but disfavoring it does not allow for punitively discriminating against this group. For purposes of this bill the matter of choice or behavior is not relevant. He further added that Committee members may hold a deep belief regarding homosexuality but he urged them not to consider a natural extension of that belief requires them to condone a punitive discrimination which affects the most fundamental human rights of this group. Discrimination is not a natural extension of any reservations which one may have about homosexuality.

***{Tape : 2; Side : B; Approx. Time Counter : 11.30}***

**EXECUTIVE ACTION ON SB 319**

**Motion:** **SEN. HOLDEN** moved that **SB 319 BE AMENDED - SB031901.av1.**

**Discussion:**

**SEN. HOLDEN** explained that the amendments would clarify premium reductions for consumers.

**Vote:** **Motion carried unanimously, 9-0.**

**Motion:** **SEN. GRIMES** moved that **SB 319 DO PASS AS AMENDED.**

**Discussion:**

**SEN. HALLIGAN** remarked that the driving record should be the key factor among the 200 factors. Marital status should have nothing

to do with this. The fact that we are the only state in the nation that doesn't use marital status as a factor shows that we are ahead of the pack and do not discriminate.

**SEN. MCNUTT** questioned where the cost shift would go because there is an aggregate and an actuarial for a broad range of people. He questioned who would pick up the premiums to make the insurance company whole.

**SEN. HOLDEN** maintained that married drivers do have better driving records. Young people under the age of 25 are being discriminated against by being lumped in the same group as those attending college parties, etc. He insisted that discounts were put in place to lower premiums and sell more policies.

**Vote:** Motion carried on roll call vote - 5-4.

**EXECUTIVE ACTION ON SB 273**

**Motion:** **SEN. JABS** moved that **SB 273 DO PASS.**

**Discussion:**

**SEN. JABS** stated that he called the Stillwater County Commissioners and they affirmed that they knew there was a need for this bill. Their concerns were the costs and the logistics. In the last few years the caseloads have increased by 50 cases per judge per year.

**CHAIRMAN GROSFIELD** agreed that it is important to pass this bill in this session. He believed there needed to be a little more work on the geographics issue.

**SEN. JABS** added that there is legislation for redistricting. Overall, the cost will not be too bad when this is all completed.

**CHAIRMAN GROSFIELD** explained that **REP. SLITER** will carry this bill in the House and is in support of the bill.

**Vote:** Motion carried unanimously - 9-0.

**CONFIRMATION OF APPOINTMENT OF WATER**  
**JUDGE C. BRUCE LOBLE**

**Motion/Vote:** **SEN. DOHERTY** moved that **A RESOLUTION BE DRAFTED FOR THE CONFIRMATION OF APPOINTMENT OF WATER JUDGE C. BRUCE LOBLE.** The motion carried unanimously, 9-0.



ADJOURNMENT

Adjournment: 12:00 P.M.

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SEN. LORENTS GROSFIELD, Chairman

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JUDY KEINTZ, Secretary

LG/JK

***EXHIBIT*** (jus29aad)